

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

UNITED STATES OF AMERICA §  
§  
v. § CRIMINAL NO. 4:07CR185 MAC/KPJ  
§  
DANNY PHUNG §

**REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the Government's request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on October 4, 2016, to determine whether Defendant violated his supervised release. Defendant was represented by Frank Henderson. The Government was represented by Ernest Gonzalez.

On January 6, 2009, Defendant was sentenced by the Honorable Marcia A. Crone, United States District Judge, to a sentence of eighty seven (87) months imprisonment on each Court one (1) and Count three (3) to be served concurrently, followed by concurrent three (3) year terms of supervised release on each Count, for the offenses of Conspiracy to Distribute Methamphetamine, Cocaine, and 3,4 Methyleneioxymethamphetamine (MDMA aka "Ecstasy"), and Conspiracy to Commit Money Laundering. Defendant began his term of supervision on April 12, 2013.

On March 7, 2016, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender under Supervision (the "Petition") (Dkt. 510). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall report to the probation officer as directed by the Court or probation officer; and (2) Defendant shall notify the probation officer ten (10) days prior to any change of residence or employment.

The Petition alleges that Defendant committed the following violations: (1) Defendant failed to report in person or submit a monthly report form to the U. S. Probation Office for the months of October, November, and December, 2015; and January and February, 2016. A certified letter was mailed to Defendant's last known address, but no response was received. (2) On January 28, 2016, the probation officer conducted a home visit at Defendant's brother's residence. However, nobody was there upon arrival. Later on the same date, Defendant's brother called the probation officer, and advised he had not seen Mr. Phung in years. As of the date of the Petition, Defendant's whereabouts were unknown.

At the hearing, Defendant entered a plea of true to Allegation One (1) Defendant shall report to the probation officer as directed by the Court or probation officer, and shall submit a truthful and complete written report within the first five (5) days of each month. Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of his supervised release.

#### **RECOMMENDATION**

Pursuant to the Sentencing Reform Act of 1984, and having considered the arguments presented at the October 4, 2016, hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of three (3) months, with no supervised release to follow. The Court further recommends that Defendant's term of imprisonment be carried out in Fannin County Jail, if appropriate.

**SIGNED this 17th day of October, 2016.**



KIMBERLY C. PRIEST JOHNSON  
UNITED STATES MAGISTRATE JUDGE